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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

In re M.V., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

M.V.,

Defendant and Appellant.

A133558

(Alameda County
Super. Ct. No. SJ07006943-07)

Following appellant M.V.'s admission to vehicle theft, the trial court placed him on probation and ordered him to pay the vehicle owner \$5,072 in restitution. Of this amount, \$2,500 was designated to replace the stolen vehicle, which was never returned to the owner. Appellant challenges the trial court's valuation of the vehicle. We find the trial court did not abuse its discretion in determining the vehicle's value, and affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

Appellant was charged in a petition under Welfare and Institutions Code section 602 with two counts of unlawfully taking and driving a motor vehicle (Veh. Code, § 10851), two counts of receiving stolen property (Pen. Code, § 496), and two counts of driving under the influence of alcohol (Veh. Code, § 23152, subd. (a)). Pursuant to a plea agreement, appellant admitted to one count of vehicle theft and one count of driving under the influence, and the remaining charges were dismissed.

Appellant stole the same 1990 Lincoln Continental on two separate occasions. In the first incident, after the vehicle's owner, Walt Ott, reported his vehicle missing, a California Highway Patrol (CHP) officer apprehended appellant and returned the vehicle to Ott on site. Appellant was found to be intoxicated. In the second incident, appellant was arrested at 2:00 a.m. for driving under the influence. At 11:00 a.m. that day, Ott reported his vehicle had been stolen. By the following day, the CHP informed Ott his vehicle had been towed to the SaveTow impound yard.

After 49 days, SaveTow auctioned off the vehicle because the accruing impound fees had exceeded its value. Ott filed a victim restitution claim totaling \$5,072, including \$2,500 for replacement of his lost vehicle, and told appellant's probation officer he had determined the \$2,500 price from online advertisements. He also stated the vehicle had been in excellent condition. Appellant's probation officer submitted a printout from the Kelley Blue Book Web site to the court, estimating the value of a 1991 Lincoln Continental in "excellent" condition to be \$1,825, and the value of the vehicle in "good" condition to be \$1,675.

At the restitution hearing, appellant's counsel, who submitted no documentation of his own regarding the value of the Lincoln, argued Ott's claim was "for a fair amount over the Blue Book of a car in good condition, and . . . should be reduced" The court disagreed, ordering appellant to pay the full \$2,500 Ott claimed for the loss of the vehicle.

II. DISCUSSION

Appellant contends the trial court abused its discretion in ordering him to pay \$2,500 in restitution for the Lincoln because the victim did not make a prima facie showing the replacement value of the vehicle exceeded its Kelley Blue Book value and because the victim's claim the Lincoln was in excellent condition contradicted his description of the vehicle to the police.

A. *Standard of Review*

The standard of review for a restitution order is abuse of discretion. (*In re Johnny M.* (2002) 100 Cal.App.4th 1128, 1132.) The "burden is on the party seeking

restitution to provide an adequate factual basis for the claim.” (*People v. Giordano* (2007) 42 Cal.4th 644, 664.) Furthermore, the amount of restitution must be proved by a preponderance of the evidence. (*People v. Gemelli* (2008) 161 Cal.App.4th 1539, 1542 (*Gemelli*).) If there is sufficient evidence to support the inference of value drawn by the trial court, the restitution order will be upheld. (*People v. Prosser* (2007) 157 Cal.App.4th 682, 686–687 (*Prosser*).)

B. *Prima Facie Showing and Replacement Value*

“Restitution ordered . . . shall be imposed in the amount of the losses, as determined.” (Welf. & Inst. Code,¹ § 730.6, subd. (h).) It “shall be of a dollar amount sufficient to fully reimburse the victim or victims for all determined economic losses incurred as the result of the minor’s conduct.” (*Ibid.*) Nonetheless, “[a] victim’s restitution right is to be broadly and liberally construed.” (*People v. Mearns* (2002) 97 Cal.App.4th 493, 500.) “The trial court is not required to order restitution equal to the exact amount of the loss, but it must employ a rational method that makes the victim reasonably whole.” (*People v. Garcia* (2011) 194 Cal.App.4th 612, 617.) In the case of lost or stolen property, the value is “the replacement cost of like property.” (§ 730.6, subd. (h)(1).)

In the procedure for determining restitution, the victim must make a prima facie showing in regard to the value of the damages for which restitution is sought and then the defendant has the burden to respond to this initial statement of loss. (*People v. Foster* (1993) 14 Cal.App.4th 939, 947 (*Foster*).) A valid prima facie showing may be satisfied by “[a] property owner’s statements in the probation report about the value of [his or] her property.” (*Id.* at p. 946.)

Appellant relies on *People v. Vournazos* (1988) 198 Cal.App.3d 948 (*Vournazos*) to claim Ott’s statements to the probation officer failed to establish prima facie evidence of the value of his vehicle. In *Vournazos*, “[n]either the [property owner’s] statement nor the testimony of the probation officer established that the sum claimed by [the victim] for

¹ All further statutory references are to the Welfare and Institutions Code.

loss of property was based on the replacement cost of the property.” (*Id.* at p. 958.) *Vournazos* is distinguishable from the present case. The record in this case establishes Ott based his claim on reviewing online advertisements to determine the replacement cost of his vehicle. Although one may dispute the methodology Ott employed, there is no question he based his valuation of the vehicle on a reasonable effort to estimate its replacement cost, consistent with the requirements of section 730.6, subdivision (h)(1). In *Vournazos*, by contrast, nothing in the record established *how* the claimed value of the property had been determined.

Furthermore, *Vournazos* has been rejected by other courts: “In [*Foster*] . . . , the only court to squarely consider the holding of *Vournazos* refused to follow it.” (*In re S. S.* (1995) 37 Cal.App.4th 543, 546.) The *Foster* court deemed *Vournazos* to be “unpersuasive” partially because “it imposes an unwarranted burden on the trial court, the prosecutor, and the victim.” (*Foster, supra*, 14 Cal.App.4th at p. 946, fn. omitted.) Similarly, the *In re S. S.* court found “it difficult to reconcile the holding in *Vournazos* with the rule” that “where the items, amounts, and sources are adequately identified in or with the probation report, the defendant has the burden of refuting them.” (*In re S. S.*, at p. 546.)

We find *Gemelli* to be more persuasive than *Vournazos*. In *Gemelli*, appellant argued “the victim’s bare, unverified statement of losses is insufficient to sustain an order for direct restitution.” (*Gemelli, supra*, 161 Cal.App.4th at p. 1542.) The *Gemelli* court disagreed, deeming the probation report and the detailed list of damages provided by the victim constituted a valid prima facie showing even though no receipts were included in either statement. (*Id.* at pp. 1541, 1544.) Our case is indistinguishable from *Gemelli*. Ott established the replacement cost of his vehicle by determining his restitution claim from online advertisements and reported his valuation in a statement to the probation officer. This constitutes a valid prima facie showing of value. (See also *Prosser, supra*, 157 Cal.App.4th at pp. 685–686 [victims’ testimony regarding the value of their lost property constituted a valid prima facie showing of value even though no receipts were provided in support of the claim].)

1142, 1152.) Ott’s statement to the probation officer represents a valid prima facie showing of the vehicle’s condition. Consequently, the juvenile court’s findings are reasonably justified and we are bound to follow them despite conflicting evidence of the vehicle’s condition.

D. Conclusion

If no abuse of discretion exists, the court generally does not overturn a restitution order. To constitute an abuse of discretion “ ‘ “the court [must] exceed[] the bounds of reason, all of the circumstances being considered.” ’ ” (*People v. Ardoin* (2011) 196 Cal.App.4th 102, 121.) “No abuse of discretion will be found where there is a rational and factual basis for the amount of restitution ordered.” (*Gemelli, supra*, 161 Cal.App.4th at p. 1542.) Ott’s valid prima facie showing rationally supported the juvenile court’s findings. The court did not abuse its discretion.

III. DISPOSITION

The judgment is affirmed.

Margulies, J.

We concur:

Marchiano, P.J.

Banke, J.